DOCKET FILE COPY ORIGINAL

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Streamlining the International	)	**IB Docket No. 95-118**
Section 214 Authorization Process	)	
and Tariff Requirements	)	

COMMENTS OF AMERICA'S CARRIERS TELECOMMUNICATION ASSOCIATION (ACTA) ON THE NOTICE OF PROPOSED RULE MAKING FCC 95-286 Released July 17, 1995

America's Carriers Telecommunications Association (ACTA), by its attorneys, submits these comments in response to the Commission's Notice of Proposed Rule Making, FCC 95-286, released July 17, 1995 (NPRM), in the above-captioned docket. ACTA is a trade association representing independent interexchange carriers, operator service providers, and other entities serving the communications needs of the American residential and small business community.

ACTA supports the initiatives of the Commission in seeking to reduce unnecessary regulation and to streamline the regulation required to serve the interests of the public. ACTA supports the amendment to Sections 63.01 and 63.15 of the Commission's rules to grant broad authority to facilities-based carriers, subject to an exclusion list of countries, which for diplomatic purposes or other reasons of national security or defense should not be routinely included in a carrier's service authority. However, ACTA submits that the Commission exercise its authority to exclude countries only on the most necessitous of circumstances. Communications is not only the lifeline of international trade and commerce, it often is the critical link to establishing and maintaining an environment of understanding between the peoples

of countries when the ability of communicating through normal governmental channels is interrupted. The processes of potential detente with the peoples of Cuba may serve as an example of how allowing family, friends and businesses to communicate with the people subjected to a regime inimicable to this nation's democratic principles, but impotent against those principles, better serves the broader interests of this country.

ACTA also supports the procedural changes that would implement these rule amendments as set forth in ¶¶s 10-12 of the NPRM.

The Commission's clarification of its transiting policies is a welcome step, but as stated is slightly ambiguous. The Commission states that it "here clarif[ies]" (NPRM ¶ 17) that carriers are currently permitted to provide service on an indirect, switched transit (or "or beyond") basis through intermediate countries which they are authorized to serve on a direct, facilities basis, regardless of whether they have Section 214 authority to serve the ultimate destination country. But then the paragraph concludes with the statement that suggests that the ultimate broadening of the "or beyond" authority is yet to be authorized at the conclusion of this rule making. Since it is uncertain as to when final action on this proceeding will occur, the International Bureau will hopefully be able to provide guidance during the interim period as to the rights today of carriers to implement "or beyond" services.

ACTA applauds the revision proposed to allow "all current and future authorized resellers of international services [to] be authorized to resell services of any authorized unaffiliated common carrier, pursuant to that carrier's tariff or contract." (NPRM ¶19) ACTA also believes it sound policy to require a separate 214 for a reseller of an affiliated carrier to provide protection against potential discrimination and anticompetitive harm. (Id.)

By encompassing within a 214 grant all countries declared "equivalent" in terms of providing resale opportunities, so as to permit the resale of private lines interconnected to the public switched network (NPRM ¶ 20), the Commission has made a wise move to reduce unnecessary paper work and expense. By including countries declared "equivalent" even after the grant of a 214 to resell international services, the Commission further reduces the need for the industry or itself to process excess paper and documents. ACTA also supports the exceptions to these relaxations of filing requirements for resellers affiliated: (1) with the U.S. facilities-based carriers whose international private lines are intended to be resold; or (2) with an international carrier which owns facilities in the foreign country to which private lines are intended to be resold (NPRM ¶ 22).

ACTA members, recognizing the opportunities in international service expansion have undertaken, in many instances, to acquire their own physical facilities by obtaining IRUs for cable facilities. The proposal to allow dominant carriers to convey transmission capacity in submarine cables without 214 authority (NPRM ¶ 30) is, therefore, a positive move supported by ACTA to remove another unnecessary barrier to more prompt implementation of competing services.

At the same time, the concerns expressed by MCI in response to AT&T's petition, cited at note 33 of the NPRM, should not be ignored. The Commission, in the personage of the International Bureau in the first instance, must be ready to eliminate any discrimination or unreasonable practices in the negotiations for transmission capacity in submarine cables.

The clarification to the definition of "foreign carrier" (that it includes foreign carriers which only provide domestic foreign telecommunications) should be adopted as proposed (NPRM ¶ 42).

Codifying the standard conditions applicable to 214 authorization (NPRM ¶ 43) is a judicious move and should be adopted as are the proposed reductions in the pleading schedules affecting 214 applications (NPRM ¶ 46).

Generally, the other proposals, not here specifically commented on, appear to be based on the same reasoned approach to minimizing unnecessary and overly costly regulation which serves no public interest purpose. They too therefore merit, it would appear, favorable consideration. ACTA however will reserve further judgment until it has reviewed the comments of others interested in the issues raised by the NPRM and will submit reply comments as necessary addressing additional issues raised by other parties.

While ACTA gladly supports the efforts of the Commission to reduce regulation shown to be unnecessary, ACTA remains concerned that a critically important area affected by the degree and extent of deregulatory efforts remains unaddressed. The telecommunications market is characterized by huge companies which dominate, and are challenged, if at all by their smaller rivals only on a limited basis. Moreover, the largest carrier is or should be known and recognized for its anticompetitive practices over this century and its antipathy toward resale.

When traditional regulatory controls are necessarily displaced as antiquated and outmoded, and competition is substituted for these earlier regulations, it is incumbent on the Commission to focus on the meaning of the changes it is bringing about for all those affected by such changes. Where rote review of applications and tariffs no longer serve as meaningful

restraints against unreasonable practices, excessive rates or charges or other predatory practices, a sane substitute must be found to remedy any abuses which occur.

In addition, those remedies must avoid being as potentially debilitating to effective competition as the predatory practices against which they are to protect. In short, effective enforcement which is both prompt and effective is critical to survival of the smaller competitors in the industry. Present complaint and tariff processes favor the established carriers if for no other reason than they have the unlimited resources to "litigate" their smaller competitors into oblivion. Commercial arbitration and/or the Alternative Dispute Resolution proceedings of the Commission are but partial answers and too often suffer from the same deficiencies as more "formal" proceedings in the ability of large companies to manipulate to their advantage. Indeed, experience demonstrates that arbitration is defined by the party with the advantages of greater size, resources and/or facilities control as a blatant demand to comply with that party's demands, leaving nothing of substance to "arbitrate," mediate or negotiate.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

The Commission is not responsible for the nature of today's telecommunications oligopolistic form of marketplace. But it is responsible, as it moves toward lessening the traditional forms of regulation, to substitute, in their stead, rational policies to assure, insofar as possible, the realistic achievement of the duties and goals Congress set forth over 60 years ago when it enacted the Communications Act. Small competitors need a fair, unbiased and competent forum to air their grievances and to obtain justice. The Commission is in the forefront and the preferred forum before which to seek these rights.

Respectfully submitted,

America's Carriers Telecommunications Association

By: _____
Charles H. Helein
General Counsel

Dated: August 22, 1995

Helein & Associates, P.C.*
8180 Greensboro Drive
Suite 700
McLean, Virginia 22102
Telephone: (703) 714-1301
Facsimile: (703) 714-1330

*** Effective August 28, 1995**